



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 5106104

Date: JAN. 28, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a hospitality and culinary branding specialist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is one of that small percentage at the very top of the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner states that he “has occupied senior management and executive roles in concept branding and operations management” “in the high-end restaurant industry,” including the following past positions:

- Director of Operations, [REDACTED], 2003-2005
- Managing Director, [REDACTED] 2005-2012
- Consultant, [REDACTED] 2012-2014
- Chief Operating Officer – [REDACTED] 2014-2016

At the time of filing, the Petitioner was the restaurant manager for [REDACTED]. The Petitioner intends to continue that work while also serving as the managing partner of [REDACTED] in [REDACTED] Florida.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director found that the Petitioner met four of the evidentiary criteria, relating to:

- (iii) Published material about the Petitioner;
- (v) Original contributions of major significance;

- (viii) A leading or critical role for distinguished organizations or establishments; and
- (ix) High remuneration in relation to others in the field.

The Director then proceeded to a final merits determination, and found that chronological gaps in the record precluded a finding of *sustained* acclaim.

On appeal, the Petitioner contends that the Director erred by examining each piece of evidence in isolation, rather than in the context of the record as a whole. We agree that the final merits determination is deficient in this regard, but there is a more fundamental issue. After reviewing all of the evidence in the record, we find that the Petitioner only satisfies two of the ten evidentiary criteria, and therefore the record does not warrant a final merits determination. Specifically, although we agree that the Petitioner has established his leading role for distinguished organizations and his relatively high remuneration, we do not agree with the Director regarding the two criteria discussed below.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

Several articles mention the Petitioner briefly or in passing, and therefore are not about him as the regulation requires:

- Local publication *Eater* [] previewed "[] Spring 2018." The article includes two sentences about [] and identified the Petitioner as one of two "key players."
- Another local [] publication, *Indulge*, offered its own list of new restaurants. The four-sentence segment about [] identifies the Petitioner as a managing partner and quotes him regarding one of the restaurant's dishes.
- A five-sentence piece in *The Caterer*, with no author credit, reported that [] [] The final sentence identifies the Petitioner as the restaurant's new general manager.
- *Big Hospitality* reported on a fire at the [] restaurant in [] The article identifies the Petitioner as "[] managing director" and quoted him regarding the fire's impact on customers.
- The Spanish-language magazine *Selecta* published an article about [] A four-sentence passage in the 435-word article identifies him as a shareholder who "has been working with large groups of restaurants in all parts of the world for decades."

The remaining two articles focus on the Petitioner, but the record does not show that these articles appeared in major media rather than local niche publications. An article in *Haute Living* states that the

Petitioner “has held a lead role in the hospitality industry for the past 25 years and has been transformative to the international culinary scene,” and is “[c]onsidered the ‘go-to guy’ when restaurant brands are looking to internationalize a culinary concept.”

A printout in the record states: “Haute Living is a leading network of luxury lifestyle publications, with bimonthly regional editions in [REDACTED] The article about the Petitioner appeared in the [REDACTED] edition; the record does not establish that the article appeared in other editions, or otherwise show nationwide publication or promotion of the article. The same printout refers to “140,000 bimonthly editions,” but this appears to refer to the total circulation of all local editions. The Petitioner did not establish that the [REDACTED] edition of *Haute Living* qualifies as major media in its own right, or that the article about the Petitioner appeared nationally.

A “Website Analysis Overview Report” indicates that *Haute Living*’s website has a “Global Rank” of 314,311, and a “Category Rank” of 17,268. The Petitioner did not establish the significance of these figures, which appear to apply to *Haute Living* as a collective whole, rather than the [REDACTED] edition.

An interview with the Petitioner, with an introductory biographical sketch, appeared in *Toys for Boys*. The magazine’s Instagram account shows the phrase “International Publication [REDACTED] [REDACTED] but there is considerable evidence that the article about the Petitioner appeared in a local [REDACTED] edition. The printout of the article includes a copyright notice for “Toys for Boys [REDACTED]” and an advertisement for [REDACTED]. Other background information refers repeatedly to [REDACTED] and no other location. “Social Media Analytics” compare the publication’s Instagram following to those of local [REDACTED] publications.

The “Website Analysis Overview Report” for *Toys for Boys* shows a “Global Rank” of 10,636,815, and less than 5000 monthly visits, resulting in a “Category Rank” that reads “N/A.”

For the above reasons, we withdraw the Director’s finding that professional or major trade publications or other major media have published material about the Petitioner.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase “major significance” is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner initially claimed to have met this criterion. The Director requested additional evidence, stating that the Petitioner’s initial evidence was deficient. The Petitioner’s response to the request for evidence did not address the “contributions” criterion, focusing instead on the other three claimed criteria. Nevertheless, in the decision notice, the Director concluded that the Petitioner had satisfied this criterion.

Further examination of the record does not show that the Petitioner has satisfied the requirements of the criterion.

The Petitioner asserted that his “state of the art culinary and immersive, experiential dining experiences . . . have provoked widespread commentary, received notice and recognition from others working in the field, and been analyzed by experts who have detailed the impact of his work on subsequent establishments.” Beyond the published articles discussed above, the submitted evidence of the significance of the Petitioner’s contributions consists of letters from individuals who have worked with the Petitioner in various capacities.

The owner of [redacted] states that the Petitioner oversaw “the creation of [redacted]’s stunning décor, interactive dining experience, and distinctive open kitchen.” The executive chairman of [redacted] states that the Petitioner’s “strategic vision was incorporated into every phase of [redacted]’s dining experience,” and that, during the Petitioner’s tenure, [redacted] emerged as the leading [redacted] restaurant in [redacted]” while other [redacted] restaurants “have emerged as the top culinary companies in their respective categories and have contributed significantly to the increase of our holding company’s annual revenues.”

While employed by [redacted] the Petitioner arranged for that company to become a client of the [redacted] [redacted] described as providing “Public Relations, Events, Marketing and Social Networking.” The owner and public relations director of the [redacted] offers general praise for the Petitioner’s abilities, stating, for instance, that he is “a distinct expert in hospitality branding” whose “innovation, creativity and analytical skills build[] solid brands.”

A [redacted] restaurateur, who has worked with the Petitioner “many times over the last few years,” states that the Petitioner “has different approaches to brand development and structure and a deep understanding of the right measurement of brand equity, metrics, and identity systems. He is definitely a prominent ‘crafter’ of specialized brand stories and positioning statements.”

The letters offer the general assertion that the Petitioner has unique talents that have contributed to the success of several restaurant ventures, but they do not show the impact that the Petitioner has had outside of his specific restaurant projects. The *Haute Living* article indicates that the Petitioner “has been transformative to the international culinary scene,” but does not elaborate except to identify some of his successful restaurant projects.

The success of those projects led the Director to conclude that the Petitioner has performed in a leading or critical role for organizations or establishments with a distinguished reputation. Such roles fall under a separate criterion at 8 C.F.R. § 204.5(h)(3)(viii), and the Director duly took account of the Petitioner’s claims in that regard, but the satisfaction of any one given criterion does not imply that the Petitioner has met others as well. As such, success in the restaurant industry is not inherently an original contribution of major significance.

The Petitioner has not identified specific, original contributions that have had an impact not only on his own restaurant projects, but on the wider hospitality field.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.